FILED
NOV 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PATRICIA ANN HOWARD
AND BILLY ARNOLD HOWARD

Upon the Petition of)
PATRICIA ANN HOWARD,)
Petitioner-Appellant,) Filed November 26, 1986
And Concerning)
BILLY ARNOLD HOWARD,) 6-388
85-1885
Respondent-Appellee.)

Appeal from the Iowa District Court for Black Hawk County (No. 30919) - C. W. Antes, Judge.

Petitioner appeals from the trial court's judgment and decree dissolving the parties' marriage and asserts the trial court erred (1) in the property settlement; (2) in the amount of alimony awarded; and (3) in the amount of attorney fees awarded. Petitioner further requests respondent be ordered to pay her attorney fees on appeal. **AFFIRMED.**

R. James Sheerer of Price, Correll & Sheerer, Cedar Falls, for petitioner-appellant.

Thomas W. Langlas of Gallagher, Langlas & Gallagher, Waterloo, for respondent-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

DONIELSON, P.J.

Petitioner wife appeals from the judgment and decree dissolving the parties' marriage. Petitioner asserts the trial court erred (1) in granting petitioner alimony of $600 per month for 36 months; (2) in not granting petitioner a substantial cash sum as part of the property settlement; and (3) in failing to award the petitioner additional attorney's fees. Petitioner further requests respondent be ordered to pay her attorney's fees on appeal. We affirm the judgment and decree entered by the trial court.

Petitioner-appellant, Patricia Howard, and respondent-appellee, Billy Howard, were married in 1952. Petitioner filed a dissolution petition in 1981.

At the time of the hearing, the parties had been married 31 years. Petitioner was 48 years old; respondent was 50 years old. The couple had three children, two of whom were emancipated and one of whom was deceased at the time of trial. Both parties have high school educations. Neither party brought any substantial property into the marriage. Petitioner is employed as a salesperson in the art department at the University of Northern Iowa earning a gross monthly salary of $897.22 nine months a year. During the summer months she works less hours, but this number is undetermined. Respondent served 20 years in the military. He is currently employed at John Deere as an electrician, earning a gross monthly salary of $2,639. His monthly military pension payment is $809, and he also receives a monthly disability payment of $62.

After petitioner filed her dissolution petition in 1981, the parties unsuccessfully attempted reconciliation numerous times. Respondent was hospitalized several times for treatment of emotional problems. The parties' entire dissolution proceeding was difficult and was marked by threats, property concealment, and property destruction. At one point, respondent was found to be in contempt of court.

On November 21, 1985, a decree was entered by the trial court. The decree awarded petitioner a 50 percent interest in the real estate equity of the parties, awarded personal property to her, provided for a payment of $1,250 to her for reimbursement of car damage, provided for alimony payments to her in the amount of $600 per month for 36 months, and required respondent to pay $1,500 toward petitioner's attorney's fees. Petitioner had requested permanent monthly alimony of $1,000, a property settlement of both money and property, and an award of $2,974.60 for her attorney's fees. Notice of appeal was filed by petitioner in December 1985.

The questions on appeal are whether the trial court erred in granting petitioner alimony of $600 per month for 36 months, in not granting the petitioner a substantial cash sum as part of the property settlement, and in failing to award the petitioner additional attorney's fees. The scope of our review in this equity action is de novo. Iowa R. App. P. 4.

I. Alimony. Petitioner contends she should have received $1,000 per month as permanent alimony. She bases this assertion on the following: (1) having little available job opportunity due to her age, having only a high school education with little work experience, possessing no skills, and earning $690.71 net per month; and (2) respondent's earning $809 per month in retirement benefits as a result of his military service, $609 per week gross from John Deere, and $62 per month for VA disability. Respondent argues that petitioner does have a stable outlook, possibilities for pay increases, an adequate retirement program which is building up quite rapidly, and additional summer employment, although the amount of earnings is unknown.

The factors to be considered by the court in granting an order of support are codified in section 598.21(3) of the Iowa Code. The parties were married 31 years before the dissolution. Both parties are in reasonably good health.

Both parties have high school educations. The distribution of property is also one factor to be considered. Petitioner received the right to payments of certain real estate contracts and rents and one-half of the net proceeds of the real estate owned by the parties. Other factors to be considered include petitioner's earning capacity and skills and the feasibility of her earning enough to provide a standard of living comparable to before the dissolution. Petitioner is currently working and receiving a net income of $690.71 per month. Respondent's brief asserts that Petitioner's Exhibit 10 at the hearing indicates petitioner's desire to obtain more education and better her job chances by showing expenses for education, books, and materials.

This court previously has stated the equitable criteria to look at in determining an award of support payments to a spouse with the lesser earning capacity:

> The equitable principles that we have recognized and enforced in the past require, in dissolution cases, that the spouse with the lesser earning capacity is entitled to be supported, for a reasonable time, in a manner as closely resembling the standards existing during the marriage as possible, to the extent that that is possible without destroying the right of the party providing the income to enjoy at least a comparable standard of living as well. But once the dependent spouse's standard of living is assured, there is no reason, in equity, for the supporting spouse to provide still more.
>
> On the contrary, as a matter of public policy, we believe that it is not desirable to do so; and we are convinced also that such an approach would be inequitable as well . . . . The imposition of an onerous burden diminishes the incentive of otherwise productive individuals to spend their time and energy in useful pursuits. . . . In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa Ct. App. 1983).

Thus, in view of the substantial assets awarded petitioner by the decree, in view of her desire and ability to obtain further education to obtain better employment, and in light of our finding in Hayne, Id., that such support is to be for a reasonable time, we find petitioner should be able to live in reasonable comfort with the $600 support payment for 36 months from respondent.

We conclude there was no inequity in the trial court's determination. Therefore, we affirm the finding that respondent is to pay petitioner $600 per month for 36 months.

II. Property Settlement. Petitioner contends she should receive a substantial cash settlement of at least $27,800 in addition to the award of her personal property, the right to payments from certain real estate contracts and rents and the rent to one-half of the net proceeds of the real estate owned by the parties, the award of $1,250 as reimbursement for damage to her vehicle, and $1,500 in attorney's fees. Petitioner bases this argument on what she believes to be her additional equitable share of the parties' personal property, secreted cash, and other assets of the parties.

The record in this matter is replete with arguments between petitioner and respondent over values of items of personal property, as well as differences whether there was any money secreted by respondent.

Section 598.21(1) of the Code of Iowa sets forth the factors to be considered by the court in dividing the property of a marriage. Despite the many disagreements between the parties as to the property involved, the trial court in a detailed, lengthy decree set forth a property settlement which obviously took consideration of the factors set forth in section 598.21(1).

The petitioner has not sustained her burden of proof in demonstrating reasons why she should be awarded an additional $27,800. Therefore, the trial court's decree is affirmed as to the property settlement awarded petitioner.

III. Attorney Fees. Petitioner seeks to have the award of attorney's fees of $1,500 which respondent was ordered to pay increased to $2,974.60, plus an award of additional attorney's fees to cover the cost of this appeal.

The controlling factor in an award of attorney's fees is the ability of the respective parties to pay, depending upon the financial circumstances and earnings

of each. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981).

In view of the ability of each of these parties to pay, we are not inclined to disturb the ruling of the trial court. Neither do we order respondent to pay petitioner's attorney's fees as a result of this appeal.

The trial court's decree is affirmed in all respects.

AFFIRMED.